



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced: **02/22/07**

Bill No: **[SB 540](#)**

Tax: **Sales and Use**

Author: **Harman**

Related Bills:

### BILL SUMMARY

This bill would exclude from the sales and use tax any federal and state excise taxes included in the selling price of gasoline, diesel fuel, and aircraft jet fuel.

### ANALYSIS

#### CURRENT LAW

Existing law imposes a sales or use tax on the gross receipts from the sale of, and on the sales price of, tangible personal property, unless specifically exempted by statute. Existing law expressly includes within the definition of “gross receipts” and “sales price” the amount of any tax imposed by the United States upon producers and importers and the amount of tax imposed by the state under the Motor Vehicle Fuel Tax Law. The law expressly excludes from the definition of “gross receipts” and “sales price” the amount of any state tax imposed upon diesel fuel pursuant to Part 31 (commencing with section 60001) of the Revenue and Taxation Code. The state Sales and Use Tax Law also exempts the sale of motor vehicle fuel used in propelling aircraft, except aircraft jet fuel, that is subject to the tax under the Motor Vehicle Fuel Tax Law.

In general, current federal law (Section 4081 of the Internal Revenue Code) imposes an excise tax of \$0.184 per gallon on producers for the removal of gasoline from a terminal or refinery, or upon importers for the entry of gasoline into the United States. This section also imposes an excise tax on clear diesel fuel or kerosene at a rate of \$0.244 per gallon, and an excise tax of \$0.194 per gallon on aviation gasoline. The federal excise tax rate on jet fuel (commonly known as aviation grade kerosene or Jet A) intended for noncommercial use is \$0.219, with the rate for commercial use at \$0.044, except under specified circumstances.

Under the Motor Vehicle Fuel Tax Law (Part 2 of Division 2 of the Revenue and Taxation Code, commencing with Section 7301), the state imposes an excise tax of \$0.18 per gallon of gasoline that is subject to the tax in Sections 7362, 7363, and 7364. A state excise tax of \$0.02 is imposed on the aircraft jet fuel dealer for each gallon of aircraft jet fuel sold to an aircraft jet fuel user, or used by the dealer as an aircraft jet fuel user.

Therefore, under the existing Sales and Use Tax Law, the computation of sales tax on the sale of gasoline includes the \$0.184 cents per gallon imposed at the federal level and the \$0.18 per gallon imposed by the state. The computation of sales tax on aircraft jet fuel includes the state excise tax of \$0.02 per gallon and the federal excise tax of \$0.219 per gallon for noncommercial use, and \$0.044 for commercial use of jet fuel.

With respect to sales of diesel fuel, the computation of the sales and use tax liability only includes the federal excise tax of \$0.244 per gallon since the state diesel fuel tax is specifically excluded by Sections 6011 and 6012.

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*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*

### PROPOSED LAW

This bill would amend Sections 6011 and 6012 to exclude from the measure of the sales and use tax the amount of any tax imposed under Part 2 (commencing with section 7301) and the amount of any tax imposed under Section 4081 of the Internal Revenue Code.

In effect the bill would exclude from the measure of sales and use tax the \$0.184 per gallon imposed on gasoline by the United States upon producers and importers, the \$0.18 per gallon tax on gasoline, the \$0.244 per gallon of federal excise tax imposed on diesel fuel, and the \$0.02 per gallon tax on aircraft jet fuel imposed under the Motor Vehicle Fuel Tax Law, as well as the commercial (\$0.044) and noncommercial (\$0.219) federal excise tax on jet fuel.

This bill would go into immediate effect, but the provisions of this bill would become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date.

### BACKGROUND

The provisions in current law which include the federal and state excise tax in the selling price of gasoline within the computation of sales tax were added by Senate Bill 325 (Ch. 1400, Stats. 1971), which also, for first time since enactment of the Sales and Use Tax Law in 1933, imposed the sales and use tax on sales of gasoline.

Exclusion of the state diesel fuel tax from the definition of “gross receipts” and “sales price” was provided by Senate Bill 840 (Ch. 912, Stats. 1994), which also enacted the Diesel Fuel Tax Law. That bill specifically excluded the diesel fuel tax from the measure of sales tax when the taxation of diesel fuel was moved to the rack level.

### COMMENTS

- 1. Sponsor and Purpose.** According to Senator Harman’s office, who is also the sponsor of the bill, this measure is intended to change the current law which sets up a system of double taxation by imposing the sales tax on another tax.
- 2. The excise tax and the sales tax are not eliminated.** The state excise tax would still be imposed and collected in the same manner. The sales tax rate is unchanged, but the bill does eliminate the imposition of the sales tax upon federal and state excise taxes. The result is that the “base” upon which sales tax is applied would be reduced by \$0.364 per gallon for gasoline, \$0.244 for diesel fuel, and \$0.02 for aircraft jet fuel.
- 3. An April 1 operative date would be easiest to implement.** This bill would be effective immediately but operative on the first day of the first calendar quarter commencing more than 90 days after the effective date.

This bill may affect the amount of the prepayment of the sales tax that a supplier is required to collect from a fuel retailer. In general, current law requires that any time the gasoline tax or diesel fuel tax is imposed, except as provided, on any removal, sale, or entry in this state of the motor vehicle fuel, aircraft jet fuel, or diesel fuel, the supplier is required to collect the prepayment of the sales tax from the retailer of the fuel. Section 6480.1 provides that if the price of fuel decreases or increases, and the established rate results in prepayments that consistently exceed or are significantly lower than the retailers’ sales tax liability, the Board may re-adjust the

rate. It is recommended that this section be amended to also allow the Board to re-adjust the prepaid sales tax rate due to passage of an exemption or exclusion.

If Section 6480.1 was amended to allow an adjustment of the prepayment rate for fuel due to an exclusion, then the Board would be able to take into account the excluded taxes when setting the rate. The Board would determine the rate by November 1 of the year prior to the effective date of the new rate and notify affected sellers by January 1. The new rate would then take effect April 1. Therefore, implementation would be less complicated if the operative date was delayed until April 1, 2008, to take into account the change in the prepayment rate at that time.

- 4. Technical amendments.** Since paragraph (c)(11) of Sections 6011 and 6012 already excludes the taxes imposed pursuant to the Diesel Fuel Tax Law (Part 31, commencing with Section 60001) from the computation of sales and use tax, the reference to Part 31 in proposed new paragraph (c)(13) is unnecessary and redundant. It is therefore suggested that, “or Part 31 (commencing with Section 60001)” be stricken from proposed paragraphs (c)(13) in both Sections 6011 and 6012.

In addition, under subparagraph (4)(A) of subdivision (c), a cross-reference should be made to reference proposed paragraphs (c)(13) of Sections 6011 and 6012 in order to incorporate the proposed exclusion. Without the cross-reference, this paragraph would appear to conflict with proposed paragraph (c)(13). It is therefore recommended that “subparagraph (13)” be added in place of “subparagraph (B)” in subparagraph (A) of paragraph (4) of subdivision (c) of both Sections 6011 and 6012. Also, subparagraph (B) of paragraph (4) of subdivision (c) of both Sections 6011 and 6012 should be deleted. The proposed paragraph (c)(13) would exclude the federal excise taxes imposed under Section 4081 of the Internal Revenue Code, therefore, subparagraph (B) appears to be redundant. Section 4091 of the Internal Revenue Code was repealed in 2004 pursuant to Public Law No. 108-357.

## **COST ESTIMATE**

Some costs would be incurred in notifying affected retailers, answering inquiries, and revising returns. A detailed estimate of the workload is pending.

## **REVENUE ESTIMATE**

### **BACKGROUND, METHODOLOGY, AND ASSUMPTIONS**

Currently both the federal and state excise taxes on gasoline are subject to the sales and use tax. Only the federal excise tax on diesel is subject to the sales and use tax. The federal and state excise tax on aircraft jet fuel is also subject to the sales and use tax.

Consumption of gasoline in California is estimated to be 16 billion gallons annually. Diesel consumption amounts to an estimated 3 billion gallons annually. Commercial jet fuel consumption amounts to an estimated 2.5 billion gallons annually. Non-commercial jet fuel consumption amounts to an estimated 150 million gallons annually.

The current excise tax rates and estimated annual excise tax revenues are as follows:

	<u>Gasoline</u>	<u>Diesel</u>	<u>Jet Fuel</u> Commercial	Non- Commercial
Federal Excise Tax Rate	\$0.184	\$ 0.244	\$0.044	\$0.219
Estimated Annual Gallons (in billions)	16	3	2.5	0.15
Estimated Annual Revenue (in billions)	\$ 2.94	\$ 0.73	\$ 0.11	\$0.033
State Excise Tax Rate	\$ 0.18	N/A	N/A	\$ 0.02
Estimated Annual Revenue (in billions)	\$ 2.88	N/A	N/A	\$0.003
Total Excise Tax Revenue (in billions)	\$ 5.82	\$ 0.73	\$ 0.11	\$0.036

Total amount of gasoline, diesel, and jet fuel revenues that would be affected by this bill is \$6.7 billion.

#### REVENUE SUMMARY

The revenue loss from exempting the \$6.7 billion from the sales and use tax would be as follows:

	<u>Revenue Effect</u>
State loss (5%)	\$335 million
Fiscal Recovery Fund (0.25%)	17 million
Local loss (2.00%)	134 million
Special District loss (0.69%)	<u>46 million</u>
Total	<u>\$532 million</u>

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